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VIA HAND DELIVERY

Kim Collins
Federal Election Commission
999 E Street, N W
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Washington, D C 20463

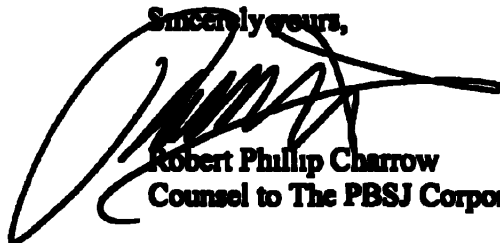
Subject MUR 5903—Response of The PBSJ Corporation

Dear Ms Collins

Please find enclosed one original and (2) copies of Respondent The PBSJ Corporation's Response in the above-noted matter

Should you have any questions, please do not hesitate contacting me at the above numbers

Sincerely yours,



Robert Phillip Charrow
Counsel to The PBSJ Corporation

Enclosures

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BEFORE THE FEDERAL ELECTION COMMISSION

Maria M Garcia,)	
)	
Complainant,)	
)	
v)	MUR 5903
)	
The PBSJ Corporation,)	Response of
)	The PBSJ Corporation
Respondent)	
)	

Introduction

The PBSJ Corporation ("PBSJ" or "Company"), through its counsel, submits this Response to the citizen-initiated Complaint filed on March 7, 2007 and received by PBSJ on March 12, 2007. The complainant, lacking specifics, asks this Commission to be guided by Justice Potter Stewart's pithy pronouncement that "I know it [pornography] when I see it." Complaint at ¶ B n 12. We agree, but with one difference: the Commission should be guided by Justice Stewart's complete sentence which ended "and the motion picture involved in this case is not that." *Jacobellis v Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Correspondingly, based on this Complaint there is no reason to believe that PBSJ violated the Federal Campaign Act of 1971, as amended.

Facts & Background

1. The PBSJ Corporation

The PBSJ Corporation is an employee-owned engineering and consulting firm based in Florida.¹ PBSJ employs a variety of professionals, including engineers, architects, and scientists, who offer a broad range of planning, design, construction, and program management services to public and private sector clients. PBSJ has approximately 3,900 employees in 80 offices throughout the United States. On May 15, 2003, PBSJ established a separate segregated fund registered with the Federal Election Commission (C-00385989). The conduct that is the subject of this Complaint predates the

¹ The Company's engineering and consulting services are provided through its wholly-owned operating subsidiaries.

establishment of the federal SSF and nothing in the Complaint suggests that there was any impropriety with respect to the SSF

2. Complainant's Embezzlement

Between 1992 and 2005, three former long-term employees embezzled at least \$36 million from PBSJ. Maria M. Garcia, the complainant, is one of those three former employees. Ms. Garcia and her two co-conspirators, Rose Licata and Scott DeLoach, have pleaded guilty to fraud and other charges and are awaiting sentencing by the United States District Court for the Southern District of Florida. See *United States v. Garcia*, 06-20583-Cr-King (S.D. Fla. Oct. 25, 2006) (pleading guilty to conspiracy to commit mail fraud (18 U.S.C. § 1349)). The impact on the Company of the embezzlement far transcends the more than \$36 million that the conspirators stole and has had a devastating impact on the Company's employee-stockholders. In particular, the embezzled funds artificially inflated the Company's overhead rate and as a result, the Company had to pay to federal and state governments millions of dollars in overhead payments, including amounts that the Company may never have actually received. As direct result of the embezzlement, the Company undertook a series of internal investigations to assess the scope of the crime, its impact on the Company's financial statements and overhead costs, the reasons that it remained undetected for more than one decade, and to address various compliance issues. These investigations will cost many millions to complete. The damage to employee morale and the Company's credibility and reputation is impossible to quantify.

Given the impact of the complainant's fraud on the Company, the Company and some of its employees filed a series of Victim Impact statements and other documents with the Court that will be sentencing Ms. Garcia. In these and other pleadings and materials, the Company and its employees urged the Court to sentence Ms. Garcia and her co-conspirators to a substantial period of incarceration and to hold Ms. Garcia and her co-conspirators jointly and severally liable for the damages they caused. Ms. Garcia instituted this Complaint after PBSJ filed those papers.

As part of the scheme to embezzle from the Company, the co-conspirators established a bank account which one or more of them named "PBSJ, Inc. PAC." This bank account was not a Company account and the Company was unaware of its existence. Its purpose was not to influence politics, but rather to launder money for the three embezzlers. This personal account was used to collect, park and then launder the embezzled funds before the three split up the bounty amongst themselves. The co-conspirators treated this bank account as their own. By way of example, in a one-month period from August 18, 2004 through September 27, 2004, Maria Garcia's cash split of the proceeds was more than \$110,000, paid out directly to her in

seven checks with untold other amounts going to stores (e.g., Neiman-Marcus), car dealerships, credit card companies and the like.² The conspirators cut checks to pay for jewelry, art, cars, condo fees, largesse to family and friends, a luxury box at Dolphin Stadium for \$85,700 (see check # 1147-July 16, 2004), and tuitions for their children at various expensive private schools (see check 1151-\$19,213.78, July 18, 2004)

DeLoach used some of the money in this account to engage in activities that violated federal election laws, he has pled guilty to those violations. See *United States v. DeLoach*, No. 06-20583-Cr-King (S.D. Fla. Oct. 25, 2006) (pleading guilty to conspiracy to commit mail fraud (18 U.S.C. § 1349) and "unlawful reimbursement for federal campaign contributions" (2 U.S.C. §§ 441f, 437g(d)). The plea agreements for the three co-conspirators are attached as Exhibit A.

Garcia claims to have "self-reported." We are unsure what she is talking about. She and her two co-conspirators were caught as a result of a Company audit, a fact acknowledged in her Complaint. See Complaint ¶ 6 n.3. At no time prior to getting caught did she hint to anyone that she was doing anything illegal, to the contrary, her activities and those of her two co-conspirators were designed to conceal their illegal conduct. Indeed, the Complainant appears to be most concerned with her belief that if she returned the money that she had embezzled, "PBSJ [had] indicated it would not contact law enforcement about the corporate embezzlement." *Id.* at ¶ 13. Of course, no such promise was ever made, PBSJ promptly reported Garcia's criminal conduct to the authorities.

3. Complainant's Allegations Are Incorrect and Misleading

Ms. Garcia's account is misleading in several aspects. After the embezzlement was uncovered, the PBSJ Audit Committee investigated the scope of the embezzlement as well as the allegations of unlawful political contributions. The Committee's ability to do a comprehensive investigation of the alleged unlawful contributions was limited because one of the embezzlers, Rose Licata, took company documents concerning political contributions and claimed to have destroyed these records. Later, in mid-2006, the FBI notified the Company that it was investigating unlawful contributions. The Company subsequently produced over five hundred thousand (500,000) pages in response to a grand jury subpoena and additional requests by the

² The checks to Garcia during this short period were as follows: (i) \$22,105.28 (8/18/2004), (ii) \$11,781.52 (8/18/2004), (iii) \$14,951.48 (8/24/2004), (iv) \$22,489.11 (9/16/2004), (v) \$18,159.41 (9/27/2004), (vi) \$12,557.69 (9/27/04), and (vii) \$8,791.40 (9/27/04). These, and certain other checks, are attached as Exhibit B.

agents Further, the Company later learned that Ms Lacata had not destroyed the Company records of certain contributions The Company then made its senior officers and directors, as well as other employees, available for interviews by the FBI and U S Attorney's Office The Company continued its cooperation throughout the investigation On March 8, 2007, two former officers, Michael Dye and Richard Wickett, were charged with their involvement in illegal contributions, including the ones outlined in Ms Garcia's complaint The United States Attorney for the Southern District of Florida has advised us that the Company would not be charged with these offenses

Further, contrary to Ms Garcia's misquotes of PBSJ's counsel's comments, the Company had acknowledged the investigation publicly in the media and its filings with the Securities and Exchange Commission At all times, the Company was cooperative with Federal investigators and made significant oversight changes to procedures involving the PACs

4. Former Company Executives

As noted above, two former Company executives, in addition to Garcia, DeLoach, and Lacata, have recently been charged by the United States Attorney for the Southern District of Florida with conspiracy to commit various crimes including mail fraud in connection with violating campaign finance laws See *United States v Dye*, No 07-20144-Cr-Gold (S D Fla March 8, 2007) (Information charging 18 U S C § 371), *United States v Wickett*, No 07-20145-Cr-Ungaro (S D Fla March 8, 2007) (Indictment charging 18 U S C §§ 371, 1001, 1341, 1343, 1346) The information and indictment are attached at Exhibit C The Company, starting in 2001, adopted policies to ensure compliance with federal and state campaign laws The actions of the two executives, as alleged by the United States Attorney, were and are inconsistent with those Company policies Specifically, Wickett has been charged with, among other things, "fraudulently conceal[ing] and disguis[ing] the diversion of PBSJ corporate funds from legitimate business uses to improper political donations " *United States v Wickett*, at 4

Argument

I. The Complaint Contains No Clear or Concise Statements About Any Violation of the FECA

A Complaint "shall provide the full name and address of the complainant," (11 C F R § 111.4(b)(1)) and "should contain a clear and concise recitation of the facts which describe a violation of a statute or

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regulation over which the Commission has jurisdiction, and [] it should be accompanied by any documentation " 11 C F R § 111.4(d)(3), (4) The Complaint does not comply with these basic requirements First, the Complaint does not provide the "address of the complainant," as required by the regulations The Complaint contains no documentation Second, the Complaint contains no clear and concise recitation of any facts describing a violation of a statute that is both timely and within the Commission's jurisdiction

Third, the Complaint does not even attempt to differentiate between alleged contributions to influence state elections and those to influence federal elections Indeed, its statements concerning "federal elections" are based "on information and belief," but lack any specific allegation, facts or documentation Complaint ¶ 9

The Complaint, instead, is rambling exegesis on the virtues of embezzlement, the Federal False Claims Act (see Cmpl ¶¶ 8, 27), the reluctance of the government to credit statements of an admitted felon (see Cmpl ¶ 24), alleged obstruction of justice by someone (see Cmpl ¶¶ 12-14), and other topics having nothing to do with this agency's jurisdiction The complaint should be dismissed as failing to comply with the basic requirements of a citizen-initiated complaint

II. The Allegations Are Time Barred

Agency civil enforcement proceedings are governed by the general five-year statute of limitations See 28 U S C § 2462, MUR 3773 (Jan 27, 1998) (tolling agreement concerning five-year statute of limitation), *Federal Election Commission v Williams*, 104 F 3d 287 (9th Cir 1996), *cert denied*, 522 U S 1015 (1997), *Alliance for Democracy v Federal Election Commission*, 355 F Supp 2d 39, 44 (D D C 2004), *Federal Election Commission v Christian Coalition*, 965 F Supp 66, 70 (D D C 1997), *Federal Election Commission v Nat'l Republican Senatorial Committee*, 877 F Supp 15, 20-21 (D D C 1995) (all holding that civil actions for enforcement of any civil fine, penalty, or forfeiture under FECA are subject to the five-year statute of limitations in 28 U S C § 2462)

Most of the allegations in the Complaint, while lacking any firm dates or other specific information, expressly involve activities alleged to have occurred in the 1990s, well outside the five-year limitation period See Complaint ¶¶ 4, 5, 7, 9, 21 Ms Garcia alleges, for instance, that she "was directed for at least a year by Richard Wickett" to reimburse donor/employees Cmpl ¶ 10, but we are not told which year nor is there any allegation that the reimbursements were for federal candidates

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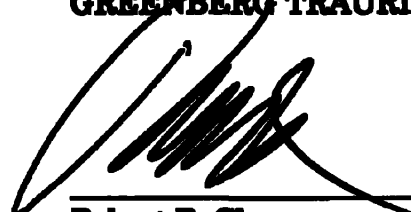
The only allegation in the Complaint that we can "time date" is the one relating to the contribution by Jim Breland, a Company employee. According to a newspaper story quoted in the Complaint, in 2002, Breland made a \$2,000 contribution to Sen. Max Cleland at Wickett's request and Breland was reimbursed through improper expense vouchers. The Company investigation revealed that Breland made a \$2,000 campaign contribution to Cleland's campaign which on March 27, 2002, was booked by the campaign as two \$1,000 contributions from Breland, one for the primary and the other for the general election. Breland was reimbursed \$2,000 on March 26, 2002, for "mileage." Although the Breland contribution and reimbursement are effectively time barred, we would welcome the opportunity to discuss the matter, as well as other matters with Commission staff.

Given that all of the allegations in the Complaint are time barred, and all of the allegations but one lack any specifics, the Commission should find that there is no reason to believe that PBSJ violated the FECA as alleged in the Complaint.

III. Conduct Not Referenced in Complaint

During its internal investigation, and in conjunction with the FBI investigation, PBSJ discovered that in 2003, one of its employees was reimbursed for \$500 campaign contribution in contravention of Company policy. Specifically, on January 16, 2003, Larry Boatman, a Company employee, contributed \$500 to Alaskans for Don Young, the authorized campaign committee of Don Young's congressional reelection campaign committee. Don Young's campaign booked the check on January 28, 2003. Shortly before making this contribution, and at the apparent request of Mr. Wickett, Boatman received a \$500 Company check dated January 15, 2003 for "Business Dev Expense." Copies of the relevant documents are attached as Exhibit D. This reimbursement was contrary to Company policy. The Company shared this information with the FBI and federal officials. This event is discussed in Mr. Wickett's indictment at ¶¶ 42-46, attached as Exhibit C.

Respectfully submitted,
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